

CARL D. SCHWARZ
Claimant

Insurance Carrier

[illegible]

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

Issues

The Administrative Law Judge found claimant entitled to a 7 percent permanent partial disability compensation award for a disability to the body as a whole based on rib fractures and a pneumothorax. The respondent appeals that finding of the Administrative Law Judge and requests the Appeals Board find claimant is not entitled to any permanent partial disability compensation. No permanent disability was awarded for claimant's ruptured spleen which was surgically removed. That finding was not appealed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record, the Appeals Board finds that the findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and adopts same as its own findings and conclusions as if specifically set forth herein. The Appeals Board adopts the analysis by the Administrative Law Judge regarding the nature and extent of claimant's disability.

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Appeals Board agrees that claimant has sustained his burden of proof that his injuries resulted in a 7 percent impairment of function. The testimony of Lawrence R. Blaty, M.D., who is board certified in physical medicine and rehabilitation, is competent and persuasive. The fact that the AMA Guides to the Evaluation of Permanent Impairment, Third Edition (Revised) do not specifically address the injuries in question does not preclude a finding of a functional impairment. K.S.A. 44-510e states in pertinent part the following:

Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the third edition, revised, of the American Medical Association Guidelines for the Evaluation of Physical Impairment [sic], if the impairment is contained therein. (Emphasis added.)

The 7 percent impairment, while not contained in the Guides, has been established by competent medical evidence.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated October 18, 1996, should be, and is hereby, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
 Douglas D. Johnson, Wichita, KS
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director